IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 255 of 2001
With
CRIMINAL MISC.APPLICATION No. 256 of 2001
And
CRIMINAL MISC.APPLICATION No. 257 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNDARAM FINANCE LIMITED(SFL) AND OTHERS
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR BR GUPTA for Applicants.
MS MANISHA SHAH, APP for Respondent No. 1.
MR YN RAVANI for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 20/02/2006

COMMON ORAL JUDGMENT

Earlier, Mr.B.R.Gupta, learned advocate for the applicants as well as Mr.Y.N.Ravani, learned advocate for respondent No.2 were fully heard by this Court, however, a request was made to adjourn the matter for some time in order to find out whether the dispute can be settled between the parties, these matters were therefore adjourned.

Today, when the matter is called out, it is stated before the Court that settlement is not possible and the Court may proceed with the judgement.

Since the point involved in all these matters is common, with the consent of the parties, all these matters are taken together for final disposal.

Applicant No.1 is a financial company, which is incorporated under the Companies Act. So far as Criminal Misc. Application No.255/2001 is concerned, it arises out of a complaint filed by respondent No.2-Smt.Shardaben Bhogilal Mehta, which is registered as Criminal Case No.1381/2000 against applicant No.1 – company as well as against its directors and branch manager respectively. Aforesaid complaint is filed by respondent No.2 herein on the allegations that by mortgaging trucks and others vehicles, which are purchased for business purpose, complainant had taken a loan from the accused company and that the accused company is doing business of money lending, by disbursing loan for business purposes. It is alleged in the complaint that against loan of Rs.4,70,000/- the accused has recovered Rs.7,30,895/- by charging penal interest which according to the complainant is on higher side and according to the complainant the accused-company had taken

Rs.2,84,160/- in excess. It further alleged in the complaint that in spite of aforesaid position, the accused have filed civil suit in the civil Court for recovering the amount. It is alleged in the complaint that accused have violated provisions of Section 5 of the Bombay Money Lenders Act, 1946. It is also the say of the complainant that the accused is doing business of money lending without obtaining license from the competent authority as required under the Bombay Money Lenders Act, 1946. It is alleged in the complaint that rate of interest charged at 36% is very excessive and it is in violation of provisions of Money Lenders Act. It is also alleged in the complaint that forged signature was taken by the accused on certain papers and the documents are forged. It is alleged that in hire purchase agreement also forgery is committed and such hire purchase agreement is contrary to law. It is alleged that accused have no right to get such document executed as accused Nos. 1 to 3 cannot be said to be the owners of trucks in question. Accordingly, the complaint is filed under the provisions of Bombay Money Lenders Act for violation of provisions of the Act.

Learned Chief Metropolitan Magistrate, Ahmedabad, issued process asking the applicants to appear before the Court. The process is issued under the provisions of Sections 5, 25, 26, 32 (1), 32 (2), 33 (1) and 34 of the Bombay Money Lenders Act. Being aggrieved by the said order of the learned Magistrate in taking cognizance by issuing process, the applicants have approached this Court by filing these applications under Section 482 of the Criminal Procedure Code stating that the applicant is a financial institution and the provisions of Bombay Money Lenders Act are not applicable to them and, it is prayed that process issued by learned magistrate may be quashed.

So far as Criminal Misc. Application No.256/2001 is concerned, complaint in question being Criminal Case No. 1382/2000 is filed by respondent No.2 – Suresh Bhogilal Mehta. Said complaint is field in connection with finance obtained by respondent No.2 for the purpose of purchasing motor trucks for transport business. Similar type of allegations as made in the aforesaid complaint are made in the present complaint. Learned Magistrate has also issued process under Section 5, 25, 26, 32, 32 (1), 32 (2), 33 (1) and 34 of the Bombay Money Lenders Act. The applicants, therefore, filed this application with a prayer that process issued by learned Magistrate may be quashed.

So far as Criminal Misc. Application No.257/2001 is concerned, complaint in question being Criminal Case No.1383/2000 is filed by respondent No.2 – Sureshbhai Bhogilal Mehta, who is also complainant of Criminal Case No.1382/2000. Accordingly, respondent No.2 has filed two complaints. In the said complaint also, similar type of process issued by learned Magistrate for violation of provisions of Money Lenders Act.

Being aggrieved by aforesaid orders of learned Magistrate in issuing process for violation of provisions of Bombay Money Lenders Act, the applicants have filed these three applications with a prayer that all the three complaints and process issued thereon may be quashed. As stated earlier, since the point involved in all these applications are similar and the applicants are same and since similar type of allegations are made in each complaint, all these matters are taken up together for final hearing.

Mr.B.R.Gupta, learned advocate for the original accused –

applicants in each of these applications, submitted that applicant No.1 is a financial company and after disbursing loan and after getting the hire purchase agreement executed, the company has acted as per the terms of the agreement. It is submitted by Mr.Gupta that the complainant is disbursing loan and is acting as per the guidelines issued by Reserve Bank of India from time to time. It is submitted by Mr.Gupta that there is already a hire purchase agreement executed by the parties and, therefore, there is no question of violation of provisions of Bombay Money Lenders Act as it cannot be said that the accused company is a money lender. Mr.Gupta further submitted that even otherwise, the complainant is a trader doing transport business and since the loan was advanced to a trader, such transaction cannot be termed as “loan” as per the definition of loan under section 2 (9) of Bombay Money Lenders Act, 1946, except for the purpose of Sections 23 and 25 of the Act.

On the other hand, Mr.Ravani submitted that the transaction in question is money lending transaction. Mr. Ravani submitted that accused is a non-banking institution and, therefore, Bombay Money Lenders Act is applicable. Mr.Ravani further submitted that the rate of interest is excessive and is contrary to Bombay Money Lenders Act and it was not open for the accused to charge interest contrary to Bombay Money Lenders Act. He also submitted that complaint is also filed under Section 506 of the Indian Penal Code, as the accused have taken away the truck and it is a case of theft. It is submitted by Mr.Ravani that the complainant has already made its prima facie case and, therefore, the process issued by learned Magistrate is in accordance with law. He, therefore, submitted that all these applications are required to be rejected.

I have heard both the learned advocates and also gone through the judgements relied upon by both the sides.

It is not in dispute that for the purpose of business, the complainant had obtained loan by executing certain documents. It is also not in dispute that process is issued only under the provisions of Bombay Money Lenders Act and, therefore, the Court is not required to consider whether any case is made out so far offence under Indian Penal Code is concerned, as no process is issued by learned Magistrate in that regard and the complainant has also not challenged that part of the order of learned Magistrate. In the present case, the Court is required to consider whether the process issued for the alleged violation of Bombay Money Lenders Act is proper and whether the Magistrate was justified in issuing process for violation of Bombay Money Lenders Act.

It is also not in dispute that the applicant is disbursing loan and it is a financial company. The complainant agreed and executed documents and even rate of interest is also prescribed in all these documents, which are signed by the complainant. Loan is taken for transport business. There is a document of hire purchase between the parties. At page 93 of Criminal Misc. Application No.255/2001, table of payment of loan is given and as per the same monthly instalment was fixed at Rs.16,375. Loan was obtained on 26-2-1996 and the last instalment was to be paid on 26-1-1999. It seems that the complainant also paid monthly instalments for some time, however, subsequently there was a default on the part of the complainant in paying instalments and, ultimately, the applicant company exercised its powers by seizing trucks, as per the agreement, and the complaint is filed in the year 2000. In such

complaint process was issued on 2nd December, 2000.

Mr.Gupta has relied upon the decision of the Supreme Court in Charanjit Singh Chadha and others v. Sudhir Mehra reported in (2001) 7 SC 417, wherein while interpreting the hire purchase contract between the parties, it has been held by the Apex Court that if possession of a vehicle/goods is recovered by the financial officer, as per the terms of hire purchase agreement, it does not amount to a criminal offence. It has also been held by the Supreme Court that Section 378 is not applicable in such case. In paragraph 17 of the judgement, Apex Court has held as under :

> "The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on the hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the terms of the agreement may not amount to any criminal offence. The agreement (Annexure P-1) specifically gave authority to the appellants to repossess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire-purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them. The learned Single Judge seriously flawed in his decision and failed to exercise jurisdiction vested in him by not quashing the proceedings initiated against the appellants. We, therefore, allow this appeal and set aside the impugned judgement. The complaint and other proceedings initiated

pursuant to such complaint are quashed."

Mr.Gupta has relied upon the decision of the Supreme Court in the case of T.Velayudhan Achari and another v. Union of India and others reported in (1993) 2 SCC 582, wherein it has been held by the Supreme Court that even qua non-banking financial institutions, the Reserve Bank of India has right to monitor the function of the non-banking financial institutions.

On the other hand, Mr.Ravani, learned advocate for respondent No.2 has relied upon the decision of Division Bench of this Court in M.M.Patel & Co. and others v. The United Hire Purchase Pvt. Ltd., reported in 8 GLR page 468. In the aforesaid case, the Court was concerned about the nature of transaction in a civil suit. The question was whether a particular document can be said to be a document of hire purchase. While deciding civil rights between the parties, this Court came to the conclusion that document in question was not a true hire purchase agreement.

In my view, aforesaid judgement is not applicable so far as present controversy is concerned, which is in connection with issuance of process by the Magistrate.

As stated earlier, certain facts are as such not in dispute, i.e., the complainant took financial assistance from the applicant-company, which is a non-banking financial company. Such loan was utilized for transport business. There was an agreement entered into between the parties for payment of instalment. Rate of interest is also specified. For considerable

time, the complainant continued to pay the instalments and ultimately for breach of the same the applicant company took appropriate proceedings and acted as per the terms of contract and subsequently, the complaint is filed in the year 2000.

So far definition clause of Loan in Bombay Money Lenders Act, 1946 is concerned, term loan is defined in Section 2, Sub-clause 9 which provides as under :

> "Loan" means an advance at interest * * * * * whereof money or in kind, but does not include -
> (a) a deposit of money or other property in a Government Post Office Bank or in any other bank or in a company or with a co-operative society ;
> (b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, (XXI of 1860) or any other enactment relating to a public, religious or charitable object;
> (c) a loan advanced by Government or by any local authority authorised by Government ;
> *[(cc) a loan advanced to a Government servant from a fund, established for the welfare or assistance of Government servants, and which is sanctioned by the State Government;]
> (d) a loan advanced by a co-operative society;
> [(d1) an advance made to a subscriber to, or a depositor in, a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund;
> (d2) a loan to or by an insurance company as defined in the

Insurance Act, 1938, (VI of 1938)];

(e) a loan to, or by bank ;

(f) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (XXVI of 1881), other than a promissory note;

[(g) except for the purposes of sections 23 and 25 --

(i) a loan to a trader ;

(ii) a loan to a money lender who holds a valid licence ; or

(iii) a loan, by a landlord to his tenant for financing of crops or seasonal finance, of not more than Rs.50 per acre of land held by the tenant ;

[(iv) a loan advanced to an agricultural labourer by his employer;]

In view of the aforesaid definition, if money is advanced at interest to a trader, it cannot be described as loan as per the provisions of the Bombay Money Lenders Act, except for the purpose of Section 23 and 25 of the Act.

Section 23 is with regard to power of the Court to limit interest recoverable in certain cases. Section 23 reads as under :

23. Power of Court to limit interest recoverable in certain cases – Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan whether advanced before or after the date on which this Act comes into force, decree, on account of interest, a sum greater than the principal of the loan due on the date of the decree."

Therefore in a given case, if it is found that loan was given to a trader, in civil proceedings the Court while passing the decree can limit the interest. As per Section 25 - State can issue notification limiting the rate of interest.

Then except the said eventuality loan to a trader is also not covered under the Act.

Section 32 of the Act reads as under :

"32. Entry of wrong sum in bond, etc., to be an offence – (1) No money lenders shall take any promissory note, acknowledgement, bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or execute any instrument in which blanks are left to be filled after execution.

(2) whoever contravenes the provisions of sub-section (1) shall, on conviction be punishable with fine which may extend to Rs.1,000 or with imprisonment of either description which may extend to six months or with both."

Section 33 (1) of the Act reads as under :

33. Penalty for molestation – (1) Whoever molests, or abets the molestation, of a debtor for the recovery of a debt due by him to a creditor shall, on conviction, be punishable with imprisonment of either description which may extend to three months or with fine which may extend to Rs.500 or with both.

Section 34 of the Money Lenders Act deal with penalties.

Considering the facts of the case referred to above, which are as such not in dispute, it cannot be said that any of the aforesaid provisions are attracted in this case. Even otherwise, loan to the complainant can never be said to be loan as per the Bombay Money Lenders Act and here the Court is not concerned with the provisions of Section 23 and 25 of the Act as it cannot be said to be applicable so far as criminal case is concerned. Even as per Section 35, a person responsible for the management of the business can be held to be guilty . Here also in the complaint it is not stated that each of the directors were responsible for day-to-day business and as stated earlier, it is a loan transaction for which hire purchase agreement is executed and instalments are fixed and acted upon by the parties. All these documents executed and signed by the complainant. When the complainant himself has signed the documents and agreed for paying interest at a particular rate and when althroughout he paid such monthly instalments, he cannot be permitted now to file a complaint on the ground that rate of interest is excessive and contrary to the provisions of Bombay Money Lenders Act. The accused company was entitled to act as per the terms of contract agreed between the parties, when, with open eyes the complainant has accepted the loan by agreeing to a particular rate of interest by signing various papers. When the financial company has acted as per the terms of agreement, it cannot be said that it has committed any offence, especially when even such advancement of money cannot be said to be 'loan' as defined by Bombay Money Lenders Act.

Considering all these aspects, these applications are allowed. The

complaints registered as Criminal Case Nos.1381/2000, 1382/2000 and 1383/2000 pending before the Court of Chief Metropolitan Magistrate, Ahmedabad and process issued thereon are quashed and set aside. Rule made absolute accordingly.

(P.B.MAJMUDAR, J.)

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